IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3749 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHWINKUMAR KANTILAL (KARTA) OF KENNEDY TEXTILES

Versus

GUJARAT INDUSTRIAL DEVELOPMENTCORPORATION

Appearance:

1. Special Civil Application No. 3749 of 2004

MR RR MARSHALL for Petitioner No. 1

MR MITUL K SHELAT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 29/12/2004

ORAL JUDGEMENT

Rule. Shri Mitul Shelat, Learned Advocate waives service of rule for the respondent.

2. In this petition under Article 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the orders passed by the respondent dated 27.2.2004 by which in exercise of powers under the provisions of the Gujarat (Public Premises) Eviction of Unauthorised Occupants, 1972, the respondents have threatened to take possession of the shed in question. In view of the fact that there is a statutory remedy available by way of appeal before the Appellate Authority/Court normally this Court would not have entertained the petition. However, in view of the fact that the proceedings are initiated against the dead person, this Court has entertained the petition and is deciding the same on merits. Shri R.R.Marshall, Learned Advocate has vehemently submitted that not a single amount is due and payable by the petitioner and/or allottee to the respondent Corporation. It is also submitted that in the year 2000 i.e. on 31.3.2000 on settling the Account, the allottee has already paid an amount of Rs.61846/-. Inspite of that, a further notice came to be issued in the year 2002 directing the said allottee to pay an amount of Rs.95,523/- in the year 2002 and in 2004, the said amount is now increased to Rs.2,17,482/- as on 16.1.2004. It is also further submitted that the allottee of the shed Kantilal N Doctor ha already expired on 16.10.1990 and the proceedings were initiated by the respondent against a dead person. Considering the fact that the proceedings came to be initiated against the dead person, without going into the larger question and deciding anything on merits whether any amount is due and payable by the petitioner or not, the impugned orders are required to be quashed and set aside as they are against a dead person and are hereby quashed and set aside. It will be open for the respondents to initiate the proceedings in accordance with law and on merits for the alleged recovery. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah, J)

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